

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DION HORTON,)	
)	Civil Action No. 04 - 1400
Plaintiff,)	
)	Judge Gary L. Lancaster /
vs.)	Magistrate Judge Lisa Pupo Lenihan
)	
ALLEGHENY COUNTY JAIL; JAMES)	
GREGG, Deputy Warden; MAJOR)	
DONIS; LT. FLOOD; DANIEL)	
KOVACS, Correctional Officer; and)	
WILKERSON, Correctional Officer)	
)	
Defendants.)	

MAGISTRATE JUDGES REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is recommended that this action be dismissed without prejudice for the Plaintiff's failure to prosecute.

II. REPORT

Plaintiff, a prisoner at Allegheny County Jail, brings this action under the Civil Rights Act of 1871, 42 U.S.C. § 1983 asserting that Defendants failed to protect him from a physical assault by another prisoner on June 8, 2003. Plaintiff filed this complaint on September 13, 2004 and paid the filing fee (Doc. No. 2) on October 5, 2004. However, Plaintiff then failed to have the Defendants served with the complaint and summons within 120 days of the filing, as required by Federal Rule of Civil Procedure 4(m). On May 5, 2005, the Court issued an Order to Show Cause (Doc. No. 3) as to why this case should not

be dismissed for failure to prosecute. Plaintiff was ordered to respond no later than May 20, 2005. As of this date, Plaintiff has failed to respond to the Order to Show Cause.

In Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863 (3d Cir. 1984), the court identified the following factors the court must consider prior to dismissing a case for failure to prosecute: (1) The extent of the party's personal responsibility; (2) Prejudice to the adversary; (3) A history of dilatoriness; (4) Whether the parties's conduct was willful or in bad faith; (5) Alternative sanctions; and (6) Meritoriousness of the claim. In this case, Plaintiff has been dilatory in his prosecution of this case: he has not had the Defendants served with the complaint and summons nor has he responded to the Court's Order to Show Cause.

III. CONCLUSION

For the reasons set forth above, it is recommended that this action be dismissed without prejudice for the Plaintiff's failure to prosecute.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule 72.1.4 B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to timely file objections may constitute a waiver of any appellate rights.

Dated: August 1, 2005 _____ Lisa Pupo Lenihan
U.S. Magistrate Judge

cc: The Honorable Gary L. Lancaster
United States District Judge

DION HORTON
62058
Allegheny County Jail
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Pittsburgh, PA 15219